**United nations convention against transnational organized crime review mechanism: Template civil society questionnaire**

(FIRST REVIEW CLUSTER-Criminalization and jurisdiction)

Introduction

The Review Mechanism of United Nations Convention against Transnational Organized Crime (UNTOC) is a peer review process, with one state being reviewed by two other states for the instruments (the Convention and its three Protocols) to which it is party. The mechanism is intended to assess how states are implementing UNTOC and the protocols to which they are party, and to identify what gaps exist in implementation that could be addressed through capacity building and technical assistance.

62 countries are to be reviewed over the next two years under the first review cluster - ‘Criminalization and Jurisdiction’. This cluster covers articles 2, 5, 6, 8, 9, 10, 15 and 23 of UNTOC; articles 3 and 5 of the Trafficking in Persons Protocol; articles 3, 5 and 6 of the Smuggling of Migrants Protocol; and articles 3, 5 and 8 of the Firearms Protocol. To assess their implementation of this cluster of provisions, states will use this [UNODC questionnaire.](https://www.unodc.org/documents/organized-crime/reviewmechanism/Self-assessment_questionnaire_for_the_United_Nations_Convention_against_Transnational_Organized_Crime_and_the_Protocols_thereto_Cluster_I.pdf)

The self-assessment phase, which should already be underway on all of these 62 countries, is one of the key opportunities for civil society to engage with the government as it prepares its responses to their questionnaire. Indeed, the Rules and Procedures of the Review Mechanism agreed by Member States set out a clearly defined role for civil society in the review process, and therefore the governments under review should consult with relevant stakeholders in the preparation of responses to the self-assessment questionnaire, including the private sector, non-governmental organizations, and academia.

Guidance

This **template civil society questionnaire** provides a framework for non-governmental individuals and groups to respond to the issues covered under the first review cluster, and to submit these inputs to the government under review and share them with other national and international stakeholders as required.

* **Part A** is for a general overview of civil society perceptions or analysis of the response to organized crime since the adoption of the UNTOC, with reference to the Cluster under review. This is primarily for dissemination to civil society and other interested partners, and can be submitted to GI-TOC on a voluntary basis, to inform their analysis of trends and findings from around the world vis-à-vis implementation of the UNTOC and its effects on efforts to prevent and counter TOC. **This part should only be shared with the State Party under review if you are sure it would be welcome**. There are politically sensitive points included, and it does not mirror the exact themes of the review mechanism, so in many cases submission of this part may not be welcomed by Member States, or could be counter-productive.
* **Part B** is a detailed analysis of the implementation of the Cluster under review.  **This part should be shared with the State Party under review**, and closely mirrors the detailed questions that states will have to answer. Therefore it should help states as they fill in their questionnaire. This can also be submitted to GI-TOC on a voluntary basis.

The States’ Self-Assessment Questionnaire is provided in case respondents would like to understand more what questions states themselves will respond to, so that civil society inputs can be tailored accordingly - [UNODC questionnaire.](https://www.unodc.org/documents/organized-crime/reviewmechanism/Self-assessment_questionnaire_for_the_United_Nations_Convention_against_Transnational_Organized_Crime_and_the_Protocols_thereto_Cluster_I.pdf)

The [text of the Convention and its Protocols](https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html) should also be consulted in filling in this questionnaire, along with the UNODC *Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto* <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html#_Full_Version_1>

This completed questionnaire can be submitted to the focal point of the state party under review, shared with interested parties, and submitted to the GI-TOC on a voluntary basis (to ian.tennant@globalinitiative.net) . GI-TOC would, on a confidential basis, keep track of all submitted civil society questionnaires for the purposes of analysis of trends and findings around the world through the review mechanism. **Questions on the PROTocol against the Smuggling of Migrants by Land, Sea and Air**

Country status

|  |  |
| --- | --- |
| Background | Civil Society consultation questions (Respond in this column) |
| The Protocol has 150 parties. The ratification status page is here – <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en>  | Is your country a party to the Protocol? Yes/No. **If no,** what reasons can you identify for why your country has not ratified this Protocol? What implications does this have for the fight against smuggling of migrants in your country?  |

PART A: General responses on the Protocol and its criminalization provisions

For submission to GI-TOC, dissemination to civil society, partners etc, and potentially to states parties in some cases.

|  |  |
| --- | --- |
| Background | Civil Society consultation questions (Respond in this column) |
| According to the UNODC, the Protocol *“aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.”*<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> According to the GI-TOC report ‘The Global Illicit Economy’, 2021: *“Over the last 20 years, migrant smuggling markets have grown as a result of a number of push factors, including conflict and violence, inequality, demography and climate change. Migration policies have become increasingly linked to national security agendas and handled within governments’ security portfolios. Wealthy countries have been fortifying their borders; in 1990, only 15 countries worldwide had border walls, whereas by 2019, there were about 70. Hostility towards migrants has made them an increasingly vulnerable population: receiving countries have reduced opportunities for lawful entry, including seeking asylum, and in transit countries migrants are increasingly at risk of violence and of becoming victims of human trafficking. Migrants are dying en route in greater numbers. Heightened border controls are forcing people onto riskier routes, and migrant smugglers treat their lives with greater disdain.”*[*https://globalinitiative.net/wp-content/uploads/2021/03/The-Global-Illicit-Economy-GITOC-Low.pdf*](https://globalinitiative.net/wp-content/uploads/2021/03/The-Global-Illicit-Economy-GITOC-Low.pdf)The Global Compact on Migration commits its signatories to *“Strengthen the transnational response to smuggling of migrants”* (Objective 9). [*https://www.un.org/en/ga/search/view\_doc.asp?symbol=A/RES/73/195*](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195) | Since becoming a State Party to the Protocol in year 2\_\_\_\_\_, has smuggling in migrants in/from/to your country (a) expanded/become more prevalent, (b) decreased/become less prevalent, or (c) stayed the same? Please provide evidence and justification, including data and case studies where possible. Overall, do you think becoming a party to Protocol has (a) improved, (b) weakened or (c) has had minimal or zero effect on your country’s ability to prevent and counter the smuggling of migrants and protect the rights of smuggled migrants? Please explain your answer. Overall, as a state party to the Protocol, do you think your country is implementing the Protocol effectively? With regards to the provisions under review in this cycle (criminalization), do you think your country has criminalized offences sufficiently, and is protecting the rights of migrants sufficiently? Please provide evidence and justification, including data and examples where possible.Do you think that preventing and countering smuggling of migrants is a political priority in your country? Please explain. If smuggling of migrants is widespread in/from/to your country, why do you think transnational organized criminal groups are able to operate and succeed in smuggling migrants in/from/to your country (please tick all that apply)? * Poor/non-implementation of provisions of the Protocol
* Conflict
* Corruption/criminal infiltration/impunity
* Human rights abuses
* Lack of gender-sensitive responses by governments
* Poor relations with international partners
* Poverty/Inequality/Socio-economic conditions
* Lack of Rule of Law
* Lack of protection for victims and witnesses
* Low understanding of the nature of organized crime and how criminal groups work
* Resilience/power of criminal groups
* Weak civil society
* Weak government and institutions
* Heavy-handed/securitized state responses
* Restricted media and civil society
* Low political will/priority
* Entry requirements (too strict)
* Entry requirements (too lax)
* Other: (please list here):

Please explain your answers: Has becoming a State Party to the Protocol (a) enhanced, (b) damaged or (c) made no difference your country’s efforts to achieve the Global Compact on Migration’s Ojective 9– i.e. to ‘strengthen the transnational response to smuggling of migrants’.  |

PART B: Detailed responses

For submission to states parties and dissemination to civil society and other partners

Please respond to the following section if you have more detailed expertise and responses to offer with regard to the specific articles under review for the Protocol - ‘Criminalization’. This cluster covers articles 3, 5 and 6 of the Smuggling in Persons Protocol

Article 3, Use of terms, article 5, Criminal liability of migrants, and article 6, Criminalization:

Summary (article3): defining terminology, i.e., smuggling of migrants, illegal entry, fraudulent travel or identity document, vessel.

Summary (article5): migrants are not liable for the fact of having been the object of the smuggling.

Summary (article6): States are asked to establish as crime the smuggling of migrants, producing – also procuring, providing, or possessing – a fraudulent travel or identity document for the purpose of enabling the smuggling of migrants; enabling a person – who is not a national or permanent resident – to remain the State without complying with the necessary requirements; participating as an accomplice in the smuggling of migrants; organizing or directing other persons to commit smuggling of migrants.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 50. Is the smuggling of migrants criminalized under your domestic legal framework (art. 6, para. 1)? 51. Is in particular the purpose of obtaining a “financial or other material benefit” a constituent element of the offence, in accordance with article 6, paragraph 1, in conjunction with article 3, paragraph (a), of the Protocol? 53. Does your country’s legal framework make a distinction between the smuggling of migrants and trafficking in persons? 54. Is producing, procuring, providing or possessing a fraudulent travel or identity document (as defined in art. 3, para. (c)) for the purpose of smuggling migrants criminalized under your country’s legal framework (art. 6, para. 1 (b)), or as a related offence or offences? 55. Is enabling a person who is not a national of or a permanent resident in your country to remain in its territory without complying with the necessary requirements for legally remaining, by using the means referred to in question 54 or any other illegal means, criminalized under your domestic legislation (art. 6, para. 1 (c))? 56. Does your country’s legal framework establish as a criminal offence the attempt to commit the offences referred to in questions 50, 54 and 55 (art. 6, para. 2 (a), in conjunction with art. 6, para. 1)? 57. Is participating as an accomplice in the offences referred to in questions 50, 54 and 55 criminalized under your country’s legal framework (art. 6, para. 2 (b), in conjunction with art. 6, para. 1)? 58. Is organizing or directing other persons to commit the offences referred to in questions 50, 54 and 55 criminalized under your country’s legal framework (art. 6, para. 2 (c), in conjunction with art. 6, para. 1)? **Text of Article 3: Use of terms**For the purposes of this Protocol:(a) “**Smuggling of migrants**” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;(b) “**Illegal entry**” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;(c) “**Fraudulent travel or identity document**” shall mean any travel or identity document:(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawfulmanner; or(iii) That is being used by a person other than the rightful holder;(d) “**Vessel”** shall mean any type of water craft, including nondisplacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.**Text of Article 5: Criminal liability of migrants****Migrants shall not become liable to criminal prosecution** under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.**Text of Article 6: Criminalization**1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:(a) **The smuggling of migrants**;(b) When committed for the purpose of enabling the smuggling of migrants:(i) Producing a fraudulent travel or identity document;(ii) Procuring, providing or possessing such a document;(c) **Enabling a person** who is not a national or a permanent resident toremain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:(a) Subject to the basic concepts of its legal system, **attempting to commit an offence** established in accordance with paragraph 1 of this article;(b) **Participating as an accomplice** in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;(c) **Organizing or directing other persons** to commit an offence established in accordance with paragraph 1 of this article.3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as **aggravating circumstances** to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:(a) That **endanger, or are likely to endanger, the lives or safety of the migrants** concerned; or(b) That entail **inhuman or degrading treatment**, including for exploitation, of such migrants.4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law. | Does your country’s legal framework criminalize, in line with the Protocol, smuggling of migrants? Does your State’s legal framework criminalize other smuggling related offences beyond what is captured in the Protocol? To what effect?Are criminal justice practitioners aware of these criminalisation provisions and do they understand them? Why or why not?’Are these provisions implemented effectively in practice? Why or why not? To what effect?Does your country’s legal framework make a distinction between the smuggling of migrants and trafficking in persons, in theory, and in practice by criminal justice practicioners?Other comments:  |

Criminalization: cases and judgments

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 60. States are invited to provide examples, relevant cases or judgments relating to successful implementation and enforcement for each of the criminal offences reviewed above.  | Please provide any relevant information or case studies relating to the successful or unsuccessful implementation and enforcement for any of the above-mentioned crimes by your country |

Difficulties encountered

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 61. Does your country encounter difficulties or challenges in implementing any provisions of the Smuggling of Migrants Protocol relevant to cluster I? 62. If domestic legislation has not been adapted to the Protocol requirements, what steps remain to be taken? Please specify.  | Do you think that your country has encountered difficulties in implementing Articles 3,5 and 6 (criminalization) of the Protocol on Smuggling of Migrants? * Yes
* No

If yes, please provide examples. If domestic legislation has not been adapted to the Protocol requirements, what steps remain to be taken? Please specify. |

Need for technical assistance

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 63. Does your country require additional measures, resources or technical assistance to implement the Protocol effectively? (a) If the answer is “Yes”, please indicate the type of assistance required to implement the Protocol: * Assessment of criminal justice response to the smuggling of migrants
* Legal advice or legislative drafting support
* Model legislation, regulations or agreements
* Development of strategies, policies or action plans
* Good practices or lessons learned
* Capacity-building through the training of criminal justice practitioners and/or the training of trainers
* Capacity-building through awareness-raising among the judiciary
* On-site assistance by a relevant expert
* Institution-building or the strengthening of existing institutions
* Prevention and awareness-raising
* Technological assistance and equipment (please be specific)
* Development of data collection or databases
* Workshops or platforms to enhance regional and international cooperation
* Specialized tools, such as e-learning modules, manuals, guidelines and standard operating procedures
* Other (please specify)

64. In which areas would border, immigration and law enforcement officials in your country need more capacity-building? 65. In which areas would criminal justice institutions in your country need more capacity-building? 66. Is your country already receiving technical assistance in those areas?(a) If the answer is “Yes”, please specify the area of assistance and who is providing it.  | Do you think that your country requires additional measures, resources or technical assistance to implement the Protocol effectively?* Yes
* No

Please explain: If yes, please indicate the type of assistance you think is required to implement the Protocol:* Assessment of criminal justice response to the smuggling of migrants
* Legal advice or legislative drafting support
* Model legislation, regulations or agreements
* Development of strategies, policies or action plans
* Good practices or lessons learned
* Capacity-building through the training of criminal justice practitioners and/or the training of trainers
* Capacity-building through awareness-raising among the judiciary
* On-site assistance by a relevant expert
* Institution-building or the strengthening of existing institutions
* Prevention and awareness-raising
* Technological assistance and equipment (please be specific)
* Development of data collection or databases
* Workshops or platforms to enhance regional and international cooperation
* Specialized tools, such as e-learning modules, manuals, guidelines and standard operating procedures
* Other (please specify)

In which areas would border, immigration and law enforcement officials in your country need more capacity-building? In which areas would criminal justice institutions in your country need more capacity-building?Do you know if your country is already receiving technical assistance in those areas?* Yes
* No

If yes, please specify the area of assistance and who is providing it. And was it useful?Do you have any other comments? |